IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 156 of 2007

with
CIVIL APPLICATION No.5901 OF 2007
IN
APPEAL FROM ORDER No. 156 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKKAR YOGESHBHAI RATILAL THRO' POA - Appellant(s)
Versus
LAXMIVIJAY GINNING PRESSING FACTORY & 3 - Respondent(s)

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Appearance :

MR SURESH M SHAH for Appellant(s) : 1,
MR PR NANAVATI for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/04/2007

ORAL JUDGMENT

The appellant-original plaintiff is before this

Court being aggrieved by order passed below exh.5 in Special Civil Suit No.139 of 2006. The learned 6th Additional Senior Civil Judge, Ahmedabad (Rural), Ahmedabad by order dated 30.03.2007 rejected exh.5 application and vacated ex parte stay granted on 07.06.2006.

Mr.Suresh M. Shah, learned advocate for appellant submitted that the 'parte stay' which was granted on 07.06.2007 is operative till date.

2. The suit was filed by the present appellant-plaintiff. A copy of the plaint is made available by learned advocate for the appellant. The Laxmivijay Ginning and Processing Factory, a registered partnership firm is joined as defendant no.1; Shri Thakkar Natvarlal Shivlal is joined as defendant no.2; one Shri Sainath Enterprises' owner, Shri Thakkar Harshadbhai Haribhai is joined as defendant no.3; and Bank of Baroda is joined as defendant no.4. It is important to note that Bank of Baroda is joined as defendant by stating that the same is a company registered under the Banking Companies Act.

It is further stated that its branch office is situated at 'Vithalbhai Patel Road', Viramgam, Ahmedabad, and summons be issued to an acquainted person of Bank of Baroda or to Branch Manager.

3. Reliefs prayed for in para 17 of the suit are: let it be declared, (a) that defendants no.3 and 4 have no right, title or interest in the properties of defendant no.1-partnership firm; (b) that defendants no.2, 3 and 4 have no right title or interest to sell movable and immovable properties of defendant no.1-partnership firm and have no right to create a right in any person, and (c) permanent injunction be issued to the effect that defendants of this suit shall not either themselves or through their servants, agents or Power of Attorneys sell the movable or immovable properties of defendant no.1-company in favour of any manner and shall not put up any construction, 'kutcha' or 'pucca' on the land of defendant no.1-company.

4. Exh.5 application is produced at page 1, the same is filed under Order XXXIX, Rules 1 and 2 and

section 151 of the Code of Civil Procedure. Prayers are in para 16. Prayer in Clause © of the plaint is repeated herein. Besides, it is prayed that no lien or any other charge or any other type of right be created on the land in question. It is also prayed that, 'the defendants be restrained from interfering with the possession of the plaintiff of Survey Nos.1, 2 and 3 during the pendency of the suit.'

Learned advocate for appellant vehemently submitted that the learned 6th Additional Senior Civil Judge has erred on three counts, viz. (i) that the learned Judge has held that bar of estoppel is applicable to the suit of the plaintiff, (ii) that having had his dispute compromised before the Tribunal (Debt Recovery Tribunal), the plaintiff does not have **prima facie case**, that the plaintiff can have reliefs from the Tribunal and therefore, the suit of the plaintiff is barred by clause (h) of section 41 of the Specific Reliefs Act, 1963, (iii) that the relief which is sought for by the plaintiff against the defendant can be valued in terms of money, and therefore, application, exh.5 is not maintainable.

5. Learned advocate for the appellant submitted that the learned Judge has erred on all points. In this regard he relied upon a decision of this Court in the matter of **Rajnikant Hasmukhlal Golwala Vs. Natraj Theatre**, reported in 2000 (1) GLH 144. The learned advocate next relied upon a judgement of Division Bench of this Court in the matter of **Ibrahim Shah Mohamad and others Vs. Noor Ahmed Noor Mohamed and others**, reported in 1983 (2) GLR 961. He also relied upon an unreported decision of this Court [Coram: M.P. Thakkar, J.(as he then was)] in the matter of **Ahir Jakha Meva and others Vs. Mistry Jetha,** in Special Civil Application No.1466 of 1976 dated 16.09.1976. Last, but not the least, he relied upon a decision of the Hon'ble the Apex Court in the matter of **Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass**, reported in A.I.R. 2005 SC 104. Learned advocate submitted that out of the aforesaid decisions two decisions he relies upon in support of his submission that, 'when it is a matter of immovable property normally court should order maintenance of status quo.' As referred to

hereinabove, the plaint prays for both 'movable and immovable' properties.

The learned Judge while taking into consideration the rival submissions of the parties has recorded in terms that, 'the matter was adjudicated upon by Debt Recovery Tribunal' and in that the plaintiff had executed a writing and it was pursuant to that writing the matter was proceeded. This aspect is gathered by the learned Judge from the written statement filed by defendant no.4-Bank.

The appellant- original plaintiff has not referred to this aspect in such detail in which it ought to have been been referred to. A very cursory reference is made in para 15 of the plaint without giving any details like the number of proceeding filed before the Debt Recovery Tribunal, the circumstances in which the matter was compromised, etc. From this, it can reasonably be inferred that the plaintiff wanted to steal an order from the court and he was successful in doing so as he obtained an ex parte order on 07.06.2006.

It is only after the written submissions were filed by defendant no.4-Bank and written statement by defendant no.2 came on record, the court could gather this information and held that the plaintiff does not have a prima facie case in his favour, that the suit is barred by estoppel and the plaintiff can seek the relief/s which he is seeking in this suit from the Debt Recovery Tribunal.

6. In view of this the Appeal is found without substance. The same is dismissed. No order as to cost.

ORDER IN CIVIL APPLICATION No.5901 OF 2007

7. In view of the order passed in the Appeal From Order no orders on Civil Application No.5901 of 2007. The Civil Application is disposed of accordingly.

(RAVI R. TRIPATHI, J.)

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